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February 15, 2016

**VIA ELECTRONIC & US MAIL** 

Ms. Jennifer LaPoma
ATTN: Lower Passaic River Remedial Project Manager
Emergency and Remedial Response Division
U.S. EPA, Region 2
290 Broadway, 19th Floor
New York, New York 10007

Re: Monthly Progress Report No. 105 – January 2016
Lower Passaic River Study Area (LPRSA) Remedial Investigation/Feasibility Study
(RI/FS)
CERCLA Docket No. 02-2007-2009

Dear Ms. LaPoma:

de maximis, inc. is submitting this Monthly Progress Report for the above-captioned project on the behalf of the RI/FS Agreement Settling Parties (Cooperative Parties Group or CPG) pursuant to the Administrative Settlement Agreement and Order on Consent (Settlement Agreement or AOC). The Progress Report satisfies the reporting requirements of Paragraph 42 of said Settlement Agreement. The CPG has revised this Progress Report to address the Region's direction in its September 1, 2015 letter about Section (d).

## (a) Actions which have been taken to comply with this Settlement Agreement during the previous month.

#### **Meetings/Conference Calls**

- On January 13, CPG and EPA Region 2 (Region 2) and CPG and Region 2 contractors held a conference call to discuss responses to comments (RTCs) on the draft 17-mile Baseline Ecological Risk Assessment (BERA).
- On January 27, CPG and Region 2 and CPG and Region 2 contractors held a meeting to discuss COPC Mapping.

#### Correspondence

- On January 4, Region 2 provided files and responses to CPG in response to a December 31 request from CPG regarding Region 2's comments on the draft 17-mile BERA.
- On January 4, CPG requested information from Region 2 to support the development of the Newark Bay Study Area (NBSA) portion of the Contaminant Fate and Transport (CFT) Model.



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- On January 5, Region 2 provided CPG items pertaining to Region 2's comments on the draft 17-mile BERA.
- On January 5, Region 2 and CPG exchanged e-mails with proposed dates and times for a conference call to discuss CPG questions/clarifications on the Region's comments draft 17-mile BERA.
- On January 6, Region 2 provided requested information to CPG regarding the NBSA portions of the CFT Model.
- On January 6 and 7, Region 2 and CPG exchanged e-mails regarding the status of action items from the July 29, 2015 conference call on the draft 17-mile BERA.
- On January 7, CPG and Region 2 confirmed January 13 as the date for a conference call regarding comments on the draft 17-mile BERA.
- On January 7, CPG noted that Region 2 and CPG had previously agreed to hold a conference call or meeting in January 2016 to discuss the status of both the LPRSA and NBSA portions of the CFT model and requested a schedule from Region 2 for providing comments on the carbon, CFT and bioaccumulation model elements for the LPRSA portion of the model.
- On January 7, Region 2 submitted a letter to CPG regarding the CPG's December 18, 2015 transmittal letter for the revised draft 17-mile Baseline Human Health Risk Assessment (BHHRA).
- On January 7, Region 2 submitted a letter to CPG regarding the Dispute Resolution procedure for the Benthic Community Exposure Depth issue.
- On January 7, Region 2 submitted a letter to CPG regarding CPG's indicated presentation materials for the upcoming January 27, 2016 meeting on Chemicals of Potential Concern (COPC) mapping approaches.
- On January 13, CPG and Region 2 exchanged e-mails regarding the list of proposed attendees and other meeting logistics for the January 27, 2016 meeting regarding COPC mapping approaches.
- On January 15, CPG submitted the December Monthly Progress Report to Region 2.
- On January 19, Region 2 requested an outline of the CPG's January 27<sup>th</sup> presentation on COPC mapping approaches and requested to be told in advance any specific questions the CPG anticipated asking during the scheduled meeting.
- On January 19, CPG responded to Region 2's request for an outline and asked for the status of the agenda for this meeting.
- On January 21, Region 2 submitted a letter to CPG regarding the scheduled January 27, 2016 COPC mapping approach meeting.
- On January 22, CPG provided the draft presentation for the January 27, 2016 meeting regarding COPC mapping approaches to Region 2
- On January 26, Region 2 provided CPG a summary of the January 13, 2016 conference call regarding Region 2's December 22, 2015 BERA RTCs.
- On January 26, CPG acknowledged receipt of Region 2's summary of the January 13, 2016 conference call and indicated that they will provide a revised delivery date for the revised BERA pending receipt and/or resolution of the remaining items.

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- On January 28, Region 2 requested a copy of the final presentation and the spatial footprint of the approximate 26 groupings discussed during the January 27, 2016 meeting regarding COPC mapping approaches from CPG.
- On January 28, CPG provided a zip file with the Kriging mapping groups and the final version of the CPG's January 27, 2016 presentation to Region 2.
- On January 28, CPG submitted a letter to Region 2 with supplemental information for the Dispute Resolution Statement regarding Exposure Depth/Zone determination.

#### Work

- CPG Modeling Team continued work on refinement of the Newark Bay component of the LPRSA Model.
- CPG evaluated alternative COPC mapping approaches.
- CPG continued revisions to the draft 17-mile BERA.

#### (b) Results of Sampling and Tests

None.

### (c) Work planned for the next two months with schedules relating to the overall project schedule for RI/FS completion

- CPG is awaiting a response from Region 2 on its supplemental information on Exposure Depth/Zone Dispute Resolution submitted on January 28, 2016.
- CPG will continue revisions to the draft 17-mile BERA.
- CPG Modeling Team will continue work on refinement of the Newark Bay component of the LPRSA Model.
- CPG will continue to develop COPC Mapping using Conditional Simulation and respond to Region 2 questions and comments following the January 27 COPC Mapping meeting.

# (d) <u>Problems encountered and anticipated problems, actual or anticipated delays, and solutions developed and implemented to address actual or anticipated problems or delays.</u>

The CPG has agreed to retain only near-term problems and concerns in the monthly reports moving forward pursuant to the direction in Region 2's September 1 letter; however, previous Progress Reports through July 2015 document in Section (d) significant issues and matters largely the result of actions and decisions by the Region and its Partner Agencies that have significantly delayed and complicated the completion of the 17-mile RI/FS. The removal of this previous information does not in any way lessen its impact on the completion of the 17-mile RI/FS.

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- Remedial Investigation (RI) Report The CPG submitted the Draft 17-mile RI Report nearly 12 months ago on February 18, 2015. Region 2 has not provided a definitive date to deliver comments on the draft report. Extended delay in providing the comments will further delay the completion of the 17-mi RI/FS.
- Feasibility Study (FS) The CPG submitted the Draft FS over 9 months ago on April 30, 2015. The Region has not provided a definitive date to deliver comments on the Draft FS. In addition, Region 2 has not provided comments on the RAO/PRG Memorandum (submitted on March 27, 2015), Alternatives Screening Memorandum (submitted on April 16 and 21, 2015) and the Alternatives Evaluation Memorandum (submitted on April 26, 2015). Extended delay in providing the comments will further delay the completion of the 17-mi RI/FS.
- Baseline Human Health Risk Assessment (BHHRA) The CPG submitted the 17mile BHHRA on June 6, 2014 and the Region provided comments on June 5, 2015. The CPG and the Region conducted several teleconferences and exchanged correspondence throughout June and August 2015. The CPG provided responses to comments (RTC) on August 21, 2015. In addition, the CPG prepared responses to the Region's July 15, 2015 additional comments, which were submitted to the Region on September 1, 2015. As documented in the CPG's RTCs, many of the Region's comments direct the CPG to make changes to the BHHRA that are inconsistent with the Region 2-approved Problem Formulation Document and the CPG's October 2013 Risk Assessment and Risk Characteristic Plan and the associated Region 2's January 31, 2014 comments and USEPA risk assessment guidance. The Region failed to meet the 30-day turnaround on responding to the CPG's response to comments that it proposed in its July 20, 2015 letter to the CPG; the failure to provide a timely response caused further delay to the delivery of a revised 17-mile BHHRA and ultimately further delay the completion of the 17-mile RI/FS. The CPG received the Region's responses on October 16 and October 30. The CPG informed Region 2 that it would submit a revised 17-mile BHHRA by December 18, 2015 during an October 22, 2015 conference call. The Region did not provide additional clarification on several remaining issues until December 4 which did not delay delivery of the revised 17-mile BHHRA by the CPG. The CPG submitted a revised 17-mile BHHRA on December 18. The Region provided a response to the CPG's December 18 transmittal letter on January 7, 2016; the CPG acknowledges receipt and reserves its rights on this matter. Finally, the CPG continues to question and strongly disagrees with the Region's need to provide the revised 17-mile BHHRA to its Partner Agencies for a complete review.
- Baseline Ecological Risk Assessment (BERA) The CPG submitted the 17-mile BHHRA on June 13, 2014 and the Region provided comments on May 1, 2015. The CPG and the Region conducted several teleconferences and exchanged correspondence throughout May and July 2015. The last teleconference was conducted on July 29, 2015, during which the Region requested the CPG provide a

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list of action items. The action items were provided on July 30 and included three items for Region 2 and one item for the CPG that required the Region's input. The Region provided its response to these two of these action items on December 22. The CPG provided 17-mile Draft BERA responses to comments (RTCs) on September 11, 2015 and additional material on September 15; the Region stated in its July 20 letter that it would provide its responses in 30 days — Region 2's responses were received in part on December 22 — more than two months later than promised. The Region provided the remaining material on January 5, 2016. The Region and CPG conducted a teleconference to clarify a number of issues on January 13. A number of issues were discussed and some clarifications were provided; however, the Region indicated that they would not be able until mid-February to provide further clarification on reference conditions and sediment quality triad. The CPG will provide a delivery schedule for the revised 17-mile BERA in February following receipt and any further additional discussion on these matters.

- As documented in the CPG's RTCs, many of the Region's comments direct the CPG to make changes to the BERA that are inconsistent with the Region 2-approved Problem Formulation Document, the CPG's October 2013 Risk Analysis and Risk Characterization Plan and the associated Region 2's January 31, 2014 comments, and USEPA risk assessment guidance. Specifically, the Region has caused an extended delay with its introduction of a Sediment Quality Triad and Reference Methodology that is (1) contradictory and (2) wholly inconsistent with USEPA guidance during June and July 2015 and continues to the present-time. Furthermore, the CPG questions and strongly disagrees with the Region's need to provide the revised 17-mile BERA to its Partner Agencies for a complete review.
- COPC Mapping The CPG began discussions with the Region regarding COPC mapping in May 2013 with the submission of the "Lower Passaic River Surface Sediment Concentration Mapping Technical Memorandum". The CPG has attempted, but was unable to conduct significant and meaningful dialogue with the Region on COPC mapping between that time and early 2015. COPC Mapping is an integral part of the 17-mile RI/FS including the chemical fate and transport modeling and the identification and evaluation of remedial alternatives. Both the mapping approach and data density are consistent with mapping and data density at other large sediment sites such as the Hudson River, Fox River, and the Lower Duwamish. The Region and CPG representatives met on March 18, 2015 to discuss the CPG's mapping and agreed to follow-on discussions. The Region and the CPG agreed to meet on June 16, 2015 and the Region stated that it would provide its portion for the CPG's review in advance of the meeting. The Region provided its position paper on June 10, 2015. Due to the short-time frame and the complexity of the Region's responses, the CPG postponed the meeting. In a June 12 email, the CPG requested that the Region provide the underlying documentation for its June 10 position paper. The Region provided this material on July 20. The CPG submitted a response to the Region's positon paper which was delivered in November and documents several

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significant shortcomings in the Region's analysis. The CPG met with Region 2 and USEPA Headquarters on January 27 to discuss this matter. The Region indicated that it wished to continue discussions on this matter.

- Exposure Depth/Zone(s) The CPG initiated discussions with the Region in early 2014 on the matter of an appropriate site-specific exposure depth/zone for benthic invertebrates. EPA HQ, Region 2 and CPG representatives conducted a teleconference and web-meeting on February 13, 2014 to discuss this matter. The CPG provided additional material to the Region on February 19, 2014. The CPG was unable to engage the Region on this matter for the remainder of 2014. In January 2015, the Region and CPG agreed to meet to discuss the exposure depth/zone and in advance of this meeting the Region and CPG exchanged information including a May 2014 paper on burrowing depth prepared by Region 2 contractors. EPA HQ, Region 2 and CPG representatives met on February 6, 2015. As a result of the meeting, it was agreed to have follow-on meetings and/or teleconferences later in February 2015; however, these meetings/teleconferences were subsequently cancelled by Region 2. On June 1, 2015, the Region provided a brief letter summarizing its rejection of the CPG's shallow exposure depth/zone. The CPG invoked dispute resolution on June 12, 2015 and began preparation of a position paper. On June 25, the Region acknowledged the CPG's invocation of dispute resolution. On July 2, the CPG requested that the Region provide the additional information mentioned in its June 25 letter that it relied upon. The Region responded on July 9 to the CPG's request. On August 18, 2015, the CPG contacted the Region and proposed to table dispute resolution and develop a sampling plan to determine LPR site-specific exposure zone(s). In advance of the August 26 teleconference, the CPG provided a brief presentation outlining data quality objectives and proposed sampling. As a result of the teleconference, the CPG provided draft QAPP worksheets on September 17 for further discussion with Region 2. The CPG submitted its dispute resolution statement on November 13; the Region responded on November 19 stating that the Region would inform the CPG its intention on how to proceed in early December. Region 2 informally contacted the CPG on December 15 that the Region has not made a decision on how to proceed on this matter Region 2 subsequently notified CPG on January 13 that it closed the dispute negotiation period and would refer the matter to Walter Mugdan, CPG submitted supplemental information to its Dispute Resolution Statement to Region 2 on January 28 citing recently published Agency guidance on determination of the biologically active zone. The CPG also believes that the negotiation period should be reopened and informal discussions continue to resolve this matter.
- Other Documents There are number of reports and technical memos (both original and revised submissions) that have been submitted to Region since 2011 that the CPG is awaiting either approval or Region 2's comments. These reports include:

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- Lower Passaic River Surface Sediment Concentration Mapping Technical Memorandum – submitted May 2013
- 2. Upstream Reference Benthic Data Report submitted August 2013
- 3. Background Sediment Data Report submitted October 2013

The CPG has received the Region's comments on a number of previously submitted reports and revised and re-submitted them in November. Please advise the CPG of the Region 2's schedule for action on these remaining documents.

17-mile RI/FS Schedule – Region 2 representatives stated at the July 2015 CAG Meeting that it intended to complete the 17-mile RI/FS and issue a Proposed Plan in CY 2016. The CPG is concerned that the current backlog of reports held by Region make such a goal unlikely.

If you have any questions, please contact Rob Law or me at (908) 735-9315.

Very truly yours,

de maximis, inc.

Willard Potter

**CPG Project Coordinator** 

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